

19

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,

v.

CRIMINAL ACTION  
NO. 04-80370-15

HOUDA MOHAMAD BERRO  
Defendant.

SENTENCING HEARING  
BEFORE THE HONORABLE JOHN CORBETT O'MEARA  
United States District Judge  
Ann Arbor U.S. Courthouse & Federal Building  
200 East Liberty Street  
Ann Arbor, Michigan  
Tuesday, December 12, 2006

APPEARANCES:

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On behalf of Defendant.

U.S. DISTRICT COURT  
ANN ARBOR  
MARCH 27, 2008  
FILED

FILE

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TO OBTAIN CERTIFIED TRANSCRIPT:  
Andrea E. Wabeke, CSR, RMR, CRR  
Official Court Reporter  
734.741.2106

682

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(None Offered)

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3

1 Ann Arbor, Michigan

2 December 12, 2006

3 | 10:53 a.m.

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— — —

5 THE CLERK: The Court calls United States of  
6 America versus Houda Berro.

7 MS. McQUADE: Good morning, your Honor.

8 Barbara McQuade on behalf of the United States.

9 MS. BECK: And Julie Beck on behalf the  
10 United States. Good morning.

11 MR. SAMAAN: Good morning, your Honor. For  
12 the record, Salem Samaan, appearing on behalf of Houda  
13 Mohamad Berro, who is approaching the podium.

14 THE COURT: Good morning, Mr. Samaan. And  
15 Miss Berro is standing next to you at the lectern.

16 You said that. We're here, as the parties know, this  
17 morning at the time and place set for the sentencing  
18 of Miss Berro, who appeared before this Court on  
19 August 9<sup>th</sup> of year, and at that time tendered a plea  
20 of guilty to Count 52 of the second superceding  
21 indictment. There was a Rule 11 Plea Agreement. The  
22 guilty plea was accepted. The Rule 11 Plea Agreement  
23 was taken under advisement.

24                                  The Court asks you on this day in December,  
25                                  Miss Berro, if you still ask the Court to accept your

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1 plea of guilty?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Is that your request as well,  
4 Mr. Samaan?

5 MR. SAMAAN: Yes, your Honor.

6 THE COURT: And Miss McQuade?

7 MS. MCQUADE: Yes, your Honor.

8 THE COURT: The Court at this time does  
9 accept the Rule 11 Plea Agreement.

10 Any reason the Defendant should not be  
11 sentenced this morning known to you, Mr. Samaan?

12 MR. SAMAAN: No, your Honor.

13 THE COURT: Do you know of any,  
14 Miss McQuade?

15 MS. MCQUADE: No, your Honor.

16 THE COURT: And Miss Berro, do you  
17 understand what I'm saying is do you know of any  
18 reason you shouldn't be sentenced today, do you?

19 THE DEFENDANT: No.

20 THE COURT: Are there any unresolved  
21 objections to the presentence investigation report  
22 from the point of view of the Defendant?

23 MR. SAMAAN: No, your Honor.

24 THE COURT: From the point of view of the  
25 Government?

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1 MS. McQUADE: No, your Honor.

2 THE COURT: And Miss Berro, what Mr. Samaan  
3 has said as your counsel as your lawyer has said, is  
4 that the presentence investigation report, which you  
5 went over with him, right?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: It doesn't have anything in it  
8 which is material, that's important and wrong and in  
9 error, and isn't missing anything that's material and  
10 important; do you agree with that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: That was a yes? All right.

13 It's time for allocution. Mr. Samaan?

14 MR. SAMAAN: Yes, your Honor, if I may.  
15 Thank you. Your Honor, the facts that led to the  
16 charges filed against Miss Berro date back to when the  
17 initial indictment was first brought against the  
18 initial defendants. At that time, Miss Berro was not  
19 charged.

20 And at that time there was an offer made by  
21 the Government that if Mr. Abdul Halim Berro, who was  
22 just sentenced before you today, who is the father of  
23 her children, if he was to plead guilty and accept an  
24 offer of plea of guilty by the Government, that in  
25 fact no charges would be brought against Miss Berro.

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1                   A similar offer was made even after Houda  
2 Berro was charged, and that is if Mr. Berro would  
3 plead guilty, Halim Berro that is, that the Government  
4 would consider diversion on behalf of Miss Berro. And  
5 at that time, there was no acceptance of plea of  
6 guilty by Mr. Berro.

7                   However, since then, the Government's  
8 objective have been met. Every one of defendants has  
9 in fact plead guilty. Nothing has happened from the  
10 time the Government reviewed the facts that led to the  
11 charges being brought against Houda Berro till today  
12 to change the reasons.

13                  Now, the Government is standing before this  
14 Court, as set forth in their memorandum, asking the  
15 Court to in fact go along with the guidelines, which  
16 were 12 to 18 months in fact incarcerating Miss Berro.

17                  THE COURT: Mr. Samaan, as you probably  
18 know, it would be a rare week that goes by this Court  
19 and other judges of this Court aren't confronted by  
20 situations where defendants appearing before them have  
21 been offered something better than what they're going  
22 to get. That's the plea bargaining process. And the  
23 Court -- there has been a court or two in the country  
24 have spoken up about that, as maybe not the nearest  
thing to free will, but in any event it is legal and

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1 it is part of the law enforcement process, and I'm not  
2 going to draw any conclusions negative to the  
3 Government based on that.

4 MR. SAMAAN: Your Honor, that was not my  
5 intent, that the Court would draw negative  
6 conclusions. However, what we're saying is that the  
7 Government at that time didn't believe that Houda  
8 Berro was this big of a criminal or has done something  
9 so wrong that would require her to go to jail. And  
10 now, same facts, same situation, they're argue in the  
11 memorandum that she should in fact go to jail.

12 And one of the issues that they raise in  
13 their memorandum that I need to speak on, Judge, is  
14 these allegations of marriage fraud. This issue was  
15 taken up by the Court in a motion that was brought  
16 sometime back, and at that time the Court, even though  
17 it did not rule on it, said that it believes that it's  
18 not going to allow that to come in, however, at the  
19 time of trial, we can revisit the issue with respect  
20 to allegations of marriage fraud.

21 Your Honor, there's nothing that would show  
22 that Miss Berro was ever involved in marriage fraud.  
23 She did get married to Robert Berro? Yes. Did she  
24 file a petition to adjust the immigration status?  
25 Yes. Did she divorce him? Yes. There's nothing

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1               illegal about what she did. No charges have ever been  
2               brought against Miss Berro alleging that she's  
3               involved in marriage fraud.

4               The Government says that based on --

5               THE COURT: We're here today on bank fraud  
6               charges, not marriage fraud charges, which the motion  
7               was before the Court I believe with regard to  
8               suppressing something at trial if the matter went to  
9               trial. It didn't go to trial.

10              MR. SAMAAN: No, that's correct.

11              THE COURT: And we're talking about bank  
12               fraud here.

13              MR. SAMAAN: That's correct. Thank you,  
14               your Honor. Your Honor, by way of background, Houda  
15               Berro is a 28 year old lady, mother of two children --  
16               a single mother of two children. She has worked hard  
17               all her life trying to support those children. She  
18               has held odd jobs. She's baby sat at the house.  
19               She's also did some sewing for people at her house.  
20               She's worked at gas stations. Presently, she's  
21               working at a pharmacy. All this to make sure she  
22               takes care of those two children that she has at home.  
23               She's the sole caretaker of these children.

24               The record would reflect that she has never  
25               broken the law prior to this incident. Miss Berro, at

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1                   the time the charges were filed, was in Lebanon. She  
2                   came back to this country to stand before this Court  
3                   and answer those charges against her. Now, she didn't  
4                   have to come back. There's no extradition from  
5                   Lebanon. She was there, and as the Government states,  
6                   she has family there. She could have fled. If she  
7                   wanted to flee, she wouldn't have come back to begin  
8                   with. She came back. She wanted to stand before this  
9                   Court and answer the charges.

10                  Did she make a mistake? Absolutely. And  
11                  she will tell that to the Court, and she did tell it  
12                  to the Court at the time she entered her plea. She  
13                  lied on her application for mortgage when she was  
14                  trying to purchase a home for her kids. She allowed  
15                  Halim Berro to make payments on that mortgage, again,  
16                  with the understanding believing that he's doing it to  
17                  help secure a home for the children.

18                  When the mortgage was paid off, she filed  
19                  for a new mortgage, refinanced, again, at the behest  
20                  of Abdul Halim, with the understanding that he's going  
21                  to use that money to open up a business, again, to  
22                  help these children.

23                  Judge, it's worthy to note that the \$124,000  
24                  mortgage refinance that was taken out by Houda Berro,  
25                  has been paid in full as we stand before this Court

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1 today, with the last payment I believe of 1,000 and  
2 something being paid, what, in the last month. She  
3 has paid every penny she's took out.

4 She did not gain anything from the actions  
5 or from lying on her application. She took  
6 responsibility for it. She did not file bankruptcy.  
7 She didn't walk away from it. She didn't run from it.  
8 She stood before this Court and answered to it and  
9 accepted her responsibility and paid every penny back.

10 All she ever wanted to do was to make sure  
11 that her children's lives and future was secure. As  
12 the letters that we set forth attached to our  
13 memorandum, Judge, clearly reflect the type of person  
14 that Houda is, a caring person, a loving person, a  
15 woman that her whole life revolves around her  
16 children. She also helps other people. The one lady  
17 that wrote on her behalf said that she was like a  
18 mother, a sister that she didn't have her. She spent  
19 all night with her one night at the hospital when she  
20 had her first baby. It was Houda that helped her get  
21 through those moments and helped to show her how to  
22 care for that baby.

23 You heard from the father, who he teaches  
24 religion at a mosque, and he says he raised his  
25 children to be good citizens, to abide by the law, to

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1           live within the boundaries of the law, and Houda has,  
2           with the exception of this, done that. And she will  
3           tell you at the time, she didn't really believe she  
4           was doing something wrong, although she does know now  
5           when she lied on her application.

6           But to her benefit, she did stand behind it  
7           and she paid back every penny she took out. She did  
8           not gain anything. And as a fact, your Honor, she has  
9           also as part of the agreement agreed to forfeit the  
10          home that her children live in.

11           Your Honor, I believe, and we've set forth  
12          many reasons in our petition, that a sentence of  
13          probation on behalf of Miss Berro would be a just and  
14          proper sentence. To take her away from her children  
15          would be devastating, not just for her, but for the  
16          kids. She has learned from her mistake. The mere  
17          thought of being taken away from the kids, a thought  
18          that she has lived with from the day she was charged  
19          until today, has caused her more stress and anxiety.  
20          And I believe that in and of itself is sufficient  
21          deterrence for her, who but for this, has led a very  
22          law abiding life, that a sentence of incarceration is  
23          not going to do anymore than she has already suffered.  
24          Thank you, your Honor.

25           THE COURT: Thank you, Mr. Samaan. And

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1 Miss Berro, you too may address the Court. If you  
2 choose to do so, now is the time.

3 THE DEFENDANT: Yes, your Honor. I just  
4 want to say I know that what did I was a mistake, but  
5 that was a fact of ignorance of the law. And I'm very  
6 sorry about that. I learned a big lesson from this, a  
7 very big lesson. I been -- I been under stress, on  
8 medication. I was under tether almost a year. It was  
9 very hard for me and painful to go through all this  
10 and I'm very sorry. I know I did a mistake, but I  
11 learned a very big lesson for it, and I learned to ask  
12 what's right and what's wrong, what's with the law and  
13 what's against the law. And I just want to ask you  
14 for one thing, with all my heart, for you -- I'm  
15 sorry, for your forgiveness.

16 THE COURT: Take your time.

17 THE DEFENDANT: I'm shaking, I'm sorry. For  
18 mercy because of my kids. They're everything to me.  
19 They're my life. They don't have anyone except me.  
20 Please don't take me away from them. Don't break  
21 their heart, please. And God bless you and your  
22 family, and thank you for listening.

23 THE COURT: Thank you, Miss Berro. For the  
24 Government, Miss McQuade.

25 MS. MCQUADE: Yes, your Honor. I won't

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1 belabor the issues we covered in the Government's  
2 sentencing memorandum. Has Court had an opportunity  
3 to read that memorandum?

4 THE COURT: Yes, I have.

5 MS. McQUADE: I just want to highlight a  
6 couple of points then that are made in the memorandum.  
7 First, your Honor, in calculating the sentencing  
8 guidelines range of 12 to 18 months, only the fraud  
9 from the two mortgage frauds that Ms. Berro was  
10 directly involved in, those two mortgage frauds on the  
11 Orchard property, were used to calculate the fraud  
12 amount.

13 And then from that fraud amount, Ms. Berro  
14 was given a four level reduction in her offense level  
15 for her role in the offense, because of the relative  
16 culpability between her and Abdul Halim Berro. So  
17 based on those factors, it's the Government's position  
18 that a guideline range of 12 to 18 months is a  
19 reasonable sentence, in light of all of the other  
20 factors under 3553(a).

21 THE COURT: Thank you, Miss McQuade. The  
22 Court finds that the facts set out in the presentence  
23 report and used in the calculation of the offense  
24 level and the criminal history category are accurate,  
25 and that the calculation itself of the sentencing

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1 guideline range is accurate. It does produce --  
2 calculation produces an offense level of 13 and a  
3 criminal history category of I.

4 And Miss Berro, I've reviewed your file, the  
5 presentence report, the Rule 11 Plea Agreement, and I  
6 have considered all of this and what you have said so  
7 persuasively, as well what Mr. Samaan said so  
8 persuasively in light of Title 18 U.S. Code 3553(a).  
9 I've also considered the fact that we have a large  
10 number of defendants, and one of the things that  
11 3553(a) tells me to consider is proportionality, or  
12 the problem of disparity, if there is disparity, when  
13 there is substantial number of people involved in the  
14 same criminal activity.

15 And believe me when I say that I believe you  
16 when you talk about your concern for your children,  
17 and I wish that the powers given to me were such that  
18 I could arrange to give you a sentence of  
19 incarceration and still let you care for your  
20 children, but I can't do that.

21 And pursuant to the Sentencing Reform Act of  
22 1984, and considering 18 U.S.C. 3553(a), I place the  
23 Defendant Houda Mohamad Berro in the custody of the  
24 Bureau of Prisons for 12 months and one day.

25 The Court finds the Defendant does not have

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1           the ability to pay a fine, therefore all fines and  
2           costs of incarceration and supervision are waived.

3           It's further ordered the Defendant shall pay the  
4           United States the usual assessment required by statute  
5           of \$100, and that's due immediately.

6           Mandatory drug testing is waived. Upon  
7           release you'll be on supervised release for a term of  
8           three years, and while on supervised release you'll  
9           abide by the standard and special conditions adopted  
10          by this district court. And due to the history of  
11          suffering from depression, the following condition is  
12          imposed:

13          If necessary, Defendant shall participate in  
14          a mental health program as approved by the probation  
15          department.

16          And let me, I think I know the answer, but I  
17          ask Miss McQuade, if in the Rule 11 the Defendant has  
18          waived appeal rights?

19          MS. MCQUADE: She has, your Honor.

20          THE COURT: Well, you probably don't have  
21          any appeal rights because they've been waived, but  
22          there's something that you or a lawyer for you  
23          discovers and believes warrants an appeal and you  
24          can't afford a lawyer, I'll appoint one for you and  
25          give that person whatever part of the record he or she

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1       needs in order to file and perfect an appeal. Any  
2       claim of appeal must be filed within ten days of  
3       today, with very few exceptions.

4                     Miss Berro, has been free on bond.

5                     Voluntary surrender?

6                     MS. McQUADE: Yes, your Honor. No objection  
7        to that.

8                     THE COURT: So ordered. Anything further  
9        the Government would like the record to reflect?

10                  MS. McQUADE: Yes, your Honor. There is the  
11       matter of forfeiture, which is part of the Rule 11  
12       Plea Agreement to forfeit the Orchard property. And  
13       Miss Beck would like to speak to that issue.

14                  MS. BECK: Your Honor, on August 9<sup>th</sup> 2006,  
15       I filed with the Court an application for entry of  
16       preliminary order of forfeiture. I would ask that  
17       that order be entered at this time. I would also note  
18       that there is a related civil case in which the real  
19       property is the defendant, and I have presented  
20       Mr. Samaan and Miss Berro with a stipulated consent  
21       judgment and final order of forfeiture, and we would  
22       ask that that order be entered. We will tender that  
23       to the Court and ask that this be entered as well to  
24       resolve the civil case.

25                  And I would also ask then that the

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1                   forfeiture be made part of the judgment and commitment  
2                   order, either by attaching the preliminary order, or  
3                   I'd be happy to provide language from the order to the  
4                   case manager for inclusion in the J and C.

5                   THE COURT: The preliminary order of  
6                   forfeiture, assuming I sign it and I'd like to look  
7                   through it briefly if I do, will by this order, by  
8                   this reference, become part of the judgment order.

9                   MS. BECK: Thank you, your Honor.

10                  THE COURT: Anything further, Miss Beck?

11                  MS. BECK: No. Thank you.

12                  THE COURT: Miss McQuade?

13                  MS. MCQUADE: No, your Honor. Thank you.

14                  THE COURT: Mr. Samaan, do you have anything  
15                  further?

16                  MR. SAMAAN: Not myself, your Honor.

17                  Although my ear is being burned by my client, if the  
18                  Court would like to give her a little time to speak.

19                  THE COURT: I don't know what she wants to  
20                  say.

21                  THE DEFENDANT: Please, your Honor, please.

22                  The house is going. The father is going, and you're  
23                  going to take their mother, too. It's going to break  
24                  their heart. It's Christmas. I was planning -- I was  
25                  hoping for your mercy, for your forgiveness. I did

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1 something wrong but I paid the price.

2 THE COURT: I know.

3 THE DEFENDANT: Don't take me away today.

4 THE COURT: I know --

5 THE DEFENDANT: They're five years old.

6 THE COURT: I know --

7 THE DEFENDANT: How can you take me away 12  
8 month from them?

9 THE COURT: I'm talking now, please. I know  
10 and I am sympathetic, maybe more than I'm supposed to  
11 be. I wish I knew how to solve this problem, but I  
12 don't, and I've got to do my job. I hope you take  
13 care of yourself.

14 THE DEFENDANT: How can I take care of my --

15 THE COURT: Stay away from depression if you  
16 can, and get help --

17 THE DEFENDANT: This is going to kill my  
18 kids.

19 THE COURT: -- if you have depression --

20 THE DEFENDANT: It's going to break their  
21 heart.

22 THE COURT: -- and I hope that you stay  
23 healthy in other ways. Stay in touch with your  
24 family. Good luck to you.

25 MR. SAMAAN: Thank you, your Honor.

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1 MS. McQUADE: Thank you, your Honor.

2 (Proceedings concluded 11:13 a.m.)

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4

5

C E R T I F I C A T I O N

6

7 I, Andrea E. Wabeke, official court  
8 reporter for the United States District Court,  
9 Eastern District of Michigan, Southern Division,  
10 appointed pursuant to the provisions of Title 28,  
United States Code, Section 753, do hereby certify  
that the foregoing is a correct transcript of the  
proceedings in the above-entitled cause on the date  
hereinbefore set forth.

11

12 I do further certify that the foregoing  
transcript has been prepared by me or under my  
direction.

13

  
Andrea E. Wabeke  
Official Court Reporter  
RMR, CRR, CSR

  
Date

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